

I ask unanimous consent for an additional 2 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mrs. HUTCHISON. We have seen the subsidies. Some are user fees but some are not. We just bailed out the airline industry because we knew it was essential for our economy. In Texas, we send billions of dollars to the highway trust fund. We get 88 cents on the dollar back. We are subsidizing other States' highways.

I don't mean that I want Texas to have to get 100 percent. Our National Highway System is built on a national system concept. That is what we need for Amtrak. We need to say: Yes, some States are getting more than others. Maybe States should step to the plate more. I would be willing to say that my State should step to the plate and help in these subsidies, just as I think every State that receives service should. That would be a worthy reform.

The bottom line is, this should be a national system that we support as part of our national security, our homeland security, a multimodal system that provides transportation for all the people of our country in a convenient way and in a way that is most necessary.

We have aviation; we have highways. Rail is an important third part of our overall transportation system.

I yield the floor.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Idaho is recognized.

WESTERN WILDFIRES

Mr. CRAIG. Madam President, I rise this morning—and I will return tomorrow and the next day—to talk about a story and a saga playing its way across the western landscape that you and I watched yesterday and on the morning news. We saw the headlines in all of the papers that said, Monstrous Wildfires Near Arizona Town; Show Low, Arizona, and The Thousands of Citizens Who Live There at Risk.

What I want to do for a brief period is stage this as the great John Wayne movie "Rio Bravo," where John Wayne captures the outlaw Joe Bernadette and sticks him in jail waiting for the judge to get the town to try the outlaw. It is the saga of the white hats and the black hats.

For two decades we have been playing the white hat and the black hat game when it comes to the management of our western public lands and especially the timber lands of the West.

In the early 1990s, scientists came together and said: "If we don't begin a concerted effort of active management and fuel reduction on the floor of western great basin forests, they will burn in wildfire." That is an exact quote, well over a decade ago, when the experts saw that the lack of management and the shutdown of our public lands would some day spur us into wildfires.

Not only did it spur us into wildfires, the scenario those scientists did not plug in was that during the decade when we shut the public lands down, all in the name of the environment, we began to inhabit them. Every little piece of land that was nonpublic got a beautiful home built on it, as people wanted to retreat into what we called the urban-wildland interface, to have their little piece of that wild west that was left staged in the movie of "Rio Bravo."

The great tragedy is, there is no wild west today. It is an urbanizing West with thousands of people in it wanting to live in those lands that have built up fuel loads on the floor of the forests that are equivalent to tens of thousands of gallons of gasoline per acre.

You and I have seen on the television the last few days the monster fire of Arizona that consumed Heber, AZ, that now has taken over 325 homes, that may take Show Low, AZ, today, rolling on across the landscape, burning up those thousands of gallons of equivalent fuel per acre on the ground. This is so dramatic, the President flies out today to view the carnage.

It isn't just the homes that are gone. It is the landscape that is gone. It is the wildlife habitat. It is the watershed—all gone, not for 5 years, not 10 years, but in the arid Southwest gone for 100 years. Why? Because man in his infinite wisdom said, two or three decades ago, all in the name of the environment, that we would no longer enter the forests. We would no longer thin the forests. We would no longer clean the floors, all in the name of leaving the land alone.

Now we go to Colorado, Durango, CO, where a fire is just a few miles from that beautiful mining town. Between Colorado and Arizona and New Mexico, we have lost over 507 homes this year, this spring. It isn't even summer yet. It isn't even late summer. It isn't the late July and August of the hot weather of the Great Basin timeframe in which most of these lands normally burn.

If this were a tornado, if this were in Louisiana or across Florida, it would have wiped out an entire landscape and thousands of homes or hundreds of homes would be gone and we would have a national disaster. We would have all kinds of focus on it, how tragic it is. But somehow this has gotten less attention, even though the West is filled with smoke today.

It should never have become a white hat/black hat issue. But for two decades, it became that. Right here on the floor of the Senate that very issue got debated. It was them versus us, the chain saw versus Bambi. Bambi won. Now Bambi is losing. Bambi's home is gone. The place she sleeps is gone. The place she drinks her water is gone. The wildlife are in danger—in an area in Arizona where two fires came together, over 300,000 acres. That is an area that is 500 miles square, as big as the whole L.A. Basin. If that is not a national disaster,

I don't know what is. That is just Arizona.

Madam President, 1.5 million acres have all burned in the Great Basin West this year, and here we are just in the last days of June. At this time in 2000, 7.3 million acres burned in the West, and we have already forgotten about it; we had only burned 1.2 million acres.

Well, the story will be continued. Let's call this "Rio Bravo." Let's call this a time when America comes together to refocus its intent on public land policy. I am going to be back with charts and maps tomorrow to visit with my colleagues about this national crisis that burns its way across the landscape of Arizona, New Mexico, and Colorado because what I am fearful of is, come late August, it will be in my home State of Idaho, which lost a million acres of land in 2000, and nobody talked about it because it was in the back country and with no homes burned. There was no national television coverage to watch a smoldering home. But Bambi lost her home, and Bambi's cousins lost their homes, and a million acres in Idaho today will be decades in coming back.

So why don't we get real and recognize that in managing our public lands there must be a balance. It cannot be either/or or all or nothing because when that happens, Mother Nature is not always the best steward of the land. Today in Arizona, Mother Nature is making headlines and she is calling herself Monster Wildfire. That is Mother Nature, but not in her finest hour.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is now closed.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 2514, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2514) to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Pending:

Kennedy amendment No. 3918, to provide for equal competition in contracting.

Mr. REID. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. CARNAHAN). Without objection, it is so ordered.

Mr. REID. Madam President, the two managers of the bill have asked that I propound a unanimous consent request.

I ask unanimous consent that the pending Kennedy amendment be temporarily set aside and that the Senate resume its consideration at 12 today and that at that time there be 30 minutes of debate equally divided on the Kennedy amendment. That would terminate at 12:30 when we recess for the party conferences. The time would be equally divided in the usual form prior to a vote in relation to the amendment at 2:30 today. The time from 2:15 to 2:30 would also be equally divided in the usual form. Further, there would be no amendments in order prior to the Kennedy amendment at 2:30 with the exception that Senator WARNER be recognized for a motion to table the Kennedy amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. There will now be general debate on the bill. From 12 to 12:30, the time will be spent on the Kennedy amendment equally divided. When we come back from the party conference at 2:15, there will be an additional 15 minutes equally divided, with the vote occurring at 2:30 on the Warner motion to table the Kennedy amendment.

Mr. WARNER. No objection on this side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Michigan.

Mr. LEVIN. Madam President, very briefly, we are making progress on the national Defense authorization bill. We have the pending amendment of Senator KENNEDY which will now be voted upon with a motion to table at 2:30. We expect we will at that point begin a debate on missile defense, but the process is not yet worked out for the amendments relative to that as to the order and how they will be offered. There will be some discussion on that matter between now and then. We are working with Senators on the amendments to see if we can act on amendments later today and possibly clear amendments. I continue to be optimistic, with our leader's assistance, with the cooperation of all Senators, that we can complete action on this bill in a timely manner this week.

My good friend from Virginia, the ranking member of our committee, is working hard to achieve that same result.

Mr. WARNER. I have worked with my leader with regard to the unanimous consent that was adopted. I will not send my amendment to the desk, but I intend to initiate debate.

As I understand from the chairman, there will be a rejoinder on the other side and we will proceed on this issue until the hour of 12 o'clock. It is also my expectation that the chairman and I, with our respective leaders, Senators DASCHLE and LOTT, will meet prior to the caucuses for the purpose of establishing a procedure by which my

amendment is to be sent to the desk and considered by the Senate. Am I correct?

Mr. LEVIN. There is an intention, as I have shared with my colleague from Virginia, to offer a second-degree amendment to that amendment. That is what we will be discussing with the leaders between now and 12 o'clock.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. I don't know that that was in the form of a unanimous consent request.

Mr. LEVIN. No.

The PRESIDING OFFICER. It was not a unanimous consent request.

Mr. WARNER. I simply stated for the convenience of the Senate the procedure we will follow between now and the hour of 2:30, at which time I will be recognized for the purpose of tabling the Kennedy amendment.

I encourage colleagues on my side to come forward. I know Senator ALLEN is anxious to speak to the Kennedy amendment, as are Senator BOND and Senator FRED THOMPSON. There will be concluding remarks by our distinguished colleague from Wyoming. That will take place from 12 to 12:30 and again from 2:15 to 2:30.

At this point in time, I will address the question of missile defense in the amendment I intend to submit to the Senate. Since I will not now send it to the desk, I will read it. This is an amendment proposed by myself, Mr. LOTT, Mr. STEVENS, Mr. COCHRAN, Mr. ALLARD, Mr. KYL, Mr. SMITH of New Hampshire, Mr. INHOFE, Mr. THURMOND, Mr. SESSIONS, Mr. ROBERTS, Mr. HUTCHINSON, Mr. BUNNING, Mr. HELMS, Mr. MCCAIN, and Mr. NICKLES.

I read the amendment as follows:

On page 217, between lines 13 and 14, insert the following:

SEC. 1010. ADDITIONAL AMOUNT FOR BALLISTIC MISSILE DEFENSE OR COMBATING TERRORISM IN ACCORDANCE WITH NATIONAL SECURITY PRIORITIES OF THE PRESIDENT.

(a) AUTHORIZATION OF APPROPRIATIONS.—In addition to other amounts authorized to be appropriated by other provisions of this division, there is hereby authorized to be appropriated for the Department of Defense for fiscal year 2003, \$814,300,000 for whichever of the following purposes the President determines that the additional amount is necessary in the national security interests of the United States:

(1) Research, development, test, and evaluation for ballistic missile defense programs of the Department of Defense.

(2) Activities of the Department of Defense for combating terrorism at home and abroad.

(b) OFFSET.—The total amount authorized to be appropriated under the other provisions of this division is hereby reduced by \$814,300,000 to reflect the amounts that the Secretary determines unnecessary by reason of a revision of assumptions regarding inflation that are applied as a result of the midsession review of the budget conducted by the Office of Management and Budget during the spring and early summer of 2002.

In simple language, it is annually the function of the Department of Defense to make certain assumptions with regard to those moneys that they require

for purposes of, for example, pay, and other large cash expenditures in a fiscal year, the amount that inflation may erode the ability to pay those sums.

In this case, fortunately, this country has experienced a low inflation rate, lower than anticipated, and therefore there is remaining within the 2002 budget sufficient cash, in my judgment and the judgment of others working in the Department of Defense, to cover this amendment. Therefore, this amendment will not dislodge any of the programs or authorizations as now exist in the bill before the Senate. I make that clear. No Senator should think his or her programs which they have fought hard for as part of this bill will be reduced in amount as a consequence of this amendment.

The amendment I will submit, hopefully this afternoon, with the concurrence of the leadership, on behalf of myself and other Members whom I enumerated, is an important step to work directly on problems in the Defense authorization bill for fiscal year 2003 as reported out of the committee which have led many Republican committee members, including this one, to have no other possibility than to vote against a bill on which we had worked for the better part of a year.

That is a very difficult decision, when members of a committee, large numbers of members in our committee, working in a bipartisan fashion, chairman and ranking member together, formulate a bill, and then when it is brought to a markup session, we are faced with a realization that an element of that bill is so totally in opposition to what the Commander in Chief of the United States, namely the President, has sent to the Congress for the purposes of fulfilling his rights as Commander in Chief in the defense of this country. That decision faced by us, and a significant number of Members, forced members to vote against that bill that we worked on for a year. We did so because of the drastic cuts and the restrictions made to missile defense by a narrow margin of the majority in the markup session.

I recognize the importance of passing a Defense authorization bill during times of war with broad bipartisan support. It sends a clear signal of support to our men and women in uniform and expresses the commitment of the Senate to fighting the global war against terrorism in defending our homeland.

In order to have such broad bipartisan support, we have to pass a bill that supports our President—again, our Commander in Chief—and his fundamental priorities for defense. In its current form, this bill fails that test. The Secretary of Defense confirmed by a letter to the chairman that he will advise the President to veto the Defense authorization bill if the missile defense provision contained in our bill is adopted by the Congress.

This view is strongly reiterated in the statement of administration policy on our bill which notes that:

The administration's missile defense program is a carefully balanced effort to defend the American people, our deployed forces, and our friends and allies, against a growing missile threat. The provision of S. 2514 would undermine this critical defense effort.

What a tragedy for our Nation, what a tragedy for the Armed Forces, to see this precisely at this time, with our Nation at war, when we need to demonstrate consensus and support. Now is not the time to send a signal that we are lessening our resolve in defending this Nation from all known and recognized threats. We must be prepared as a nation. History will be our judge.

The amendment I will offer would restore the funding reductions to missile defense made during the committee's consideration of the bill. This amendment would provide an additional \$814 million-plus to restore the funding taken from the President's request for missile defense during markup and allow the President the flexibility to spend the money for missile defense and activities of the Department of Defense to counter terrorism both at home and abroad.

That is very important. This is basically parallel to what we did last year on the Defense authorization bill. I will address that in greater detail momentarily, but it gives the flexibility to the President of the United States and his Secretary of Defense to allocate the \$814 million-plus in accordance with those two objectives.

This is a reasonable compromise, I believe, to the position taken by the majority during the course of the markup. Again, it is identical in form to the compromise we reached last year on this issue.

At the outset of this discussion, I want to remind Senators present of a measure we passed in 1999 by a vote of 97 to 3, a measure that was subsequently signed into law by President Clinton, the National Missile Defense Act of 1999, referred to as the Cochran Act, as he was the principal drafter and sponsor of that very important law. The act is short and not very complicated. It does two things very clearly.

First, the Cochran Act establishes a policy of deploying, "as soon as is technologically possible," an effective defense of the territory of the United States—that is all 50 States and the U.S. territories—from limited ballistic missile attack.

Madam President, 97 Senators are on record supporting that policy.

A second part of that law reiterates a longstanding policy that the United States will seek further reduction in Russian nuclear forces.

During the debate on this act, some contended that its two policy declarations have equal stature and status. Equal or not, I think all would agree both are important statements of policy. The amendment to include a statement of policy on arms reduction was offered because some Senators feared that deployment of a missile defense

could lead to a new offensive arms race. But President Bush did not see any inconsistency in these two goals and has pursued both vigorously. He has made missile defense one of his top national security priorities, and he has dramatically—and, I would add, appropriately—expanded funding to expedite the development and deployment of those important defenses.

At the same time, he sought to restructure this Nation's relationship with Russia. He outlined this policy in a landmark speech at the National Defense University in May of 2001:

Today's Russia is not yesterday's Soviet Union. We need a new framework that allows us to build missile defenses, and that encourage still further cuts in nuclear weapons.

President Bush has since engaged Russian President Putin on a regular and intensive basis to move the Russian-American relationship beyond cold war hostility to one built on openness, shared goals, and shared responsibility. President Bush has been extraordinarily successful in this effort.

Last December, the President announced his intent to withdraw from the 1972 Anti-Ballistic Missile Treaty. This is a treaty which specifically prevented both Russia and the United States from developing and deploying effective missile defenses. Critics feared that President Bush's action would lead to a harsh Russian denunciation. In fact, Russia reacted hardly at all.

President Putin announced that the U.S. move was a mistake, but it would not affect the improved United States-Russian relationship.

Many missile defense critics feared that withdrawing from the Anti-Ballistic Missile Treaty would trigger a new arms race. Yet on May 24, at the summit in Moscow, President Bush and President Putin signed a landmark arms control agreement.

This breakthrough treaty, negotiated in a period of just several months, will reduce nuclear arsenals from their present levels of about 6,000 strategic warheads to 1,700 to 2,200 strategic warheads over the next decade. This is the most dramatic reduction in strategic weapons history.

Far from disrupting the United States-Russian relationship, withdrawing from the ABM Treaty and developing missile defenses have allowed us to develop defenses for the United States, its allies and friends, and its deployed troops, against the real and increasing threat of missile attack, while at the same time our relationship with Russia appears to grow in a positive manner.

So President Bush has taken to heart both policy statements in the National Missile Defense Act of 1999. He has made missile defense a high priority and is doing all he can to expedite the development and deployment of missile defenses. And he has achieved the goal of further reductions in Russian nuclear forces.

Now it is up to us, the Senate and the Congress, to do our part. The President

has made a reasonable and balanced request for missile defense this year. The request of \$7.6 billion is smaller than last year's request and smaller than last year's appropriated level.

The House of Representatives fully funded this request level. In fact, they have increased it slightly. Yet the bill of the Senate Armed Services Committee cuts over \$800 million from the effort to develop and deploy missile defenses. Yes, against that background, our committee went ahead and cut \$800-plus million.

This bill would impose reductions that impede progress, increase program risk, and undermine the effort to provide for the rapid development and deployment of missile defenses for our Nation, our allies and friends, and our soldiers, sailors, marines, and airmen deployed overseas. The administration asserts quite accurately, in my view, that the committee bill undercuts missile defense efforts:

... by severely reducing the program's workforce, significantly impairing DOD's ability to effectively integrate components currently under deployment, delaying boost-phase defense efforts, hindering early deployment contingent capability, undermining efforts to address countermeasures, and slowing key sensor programs.

That is the assessment of the Secretary of Defense.

The bill before the Senate would cut hundreds of millions of dollars from theater missile defense, programs to defend against short-, medium- and intermediate-range missiles.

That is the threat that is most identified as impairing the ability of our forward-deployed forces to pursue their missions without the threat of missile attack. These are the very missiles our troops faced in the Persian Gulf war over a decade ago, and we know well of the casualties that our forces, U.S. forces and indeed those of our allies, took as a consequence of the short-range Scud missiles fired indiscriminately by Saddam Hussein.

Today we have some improved defenses but not adequate defenses against these short-range weapons.

Last September we suffered a grievous attack on our Nation. Many lives and much property were lost in that attack. On that terrible day we also lost our uniquely American feeling of invulnerability. Homeland security is now, without a doubt, our top priority. Missile defense is an integral part of homeland defense.

The most recent national intelligence estimate on missile threats—that is January of this year—states:

The probability that a missile with a weapon of mass destruction will be used against U.S. forces or interests is higher today than during most of the cold war, and will continue to grow as the capabilities of potential adversaries mature.

George Tenet, head of the CIA, during his testimony to the Armed Services Committee earlier this year, made the point that missile threats have sometimes evolved much faster than

predicted and confirm the view expressed in the national intelligence estimate that I just quoted that both terrorism and missile threats must be taken very seriously.

I understand and respectfully disagree with those who argue that every dollar we spend on missile defense is one dollar we don't spend protecting our shores and harbors.

That is precisely what the defense of our Nation against missile attack does—protects our shores. It protects our harbors, our cities, our towns, our villages, and our people from the world's most terrible weapons.

As we did last year, this amendment would provide flexibility for the President to use the additional funds as he sees fit to defend this Nation from missile defense and the Department of Defense activities in counterterrorism. It is a discretion that is very much needed by the President and the Secretary of Defense. And it parallels exactly what we did last year.

I say to my colleagues that this amendment offers a reasonable compromise on an issue that has divided the Armed Services Committee for the past 2 years, and continues, regrettably, to divide the Senate. This is the same formula that we used last year to heal a serious rift in the committee and the Senate, and thereby bring the bill to the floor on a bipartisan basis.

I note that this amendment differs in one important aspect from the one we passed last year. Last year, we simply added \$1.3 billion to the defense top line. This year, the amendment does not increase the administration's budget request. It does not put money on top. Rather, it takes advantage of the fact that the administration will conduct its annual midyear review of inflation assumptions, including those used to craft the defense budget request.

I have been assured that the new inflation savings that will result from this abuse will be more than adequate to cover this added amount for homeland defense. The amendment provides an offset based on these anticipated inflation savings.

I commend Chairman LEVIN for the statesmanship he displayed on the issue last year at the time I brought the amendment up which closed the rift between the aisles. Our bill came to the floor last September. The Pentagon and the World Trade Center were still burning, and we were about to embark on a war against the forces of international terrorism. Our distinguished chairman, Mr. LEVIN, used these eloquent words during the debate last year on this amendment:

As important as the funding that we provide is, there is something else that is critically important. That is the unity of purpose that we showed as we entered into the current struggle. Debate on a bill such as this is an inherent part of our democracy. But, in one regard, we operate differently in times of national emergency. We set aside those differences we cannot reach.

I think the spirit of that very important statement by our chairman pre-

vails today, and should be the guideline—the guiding factor—when each Senator eventually votes on this measure. Today, we remain at war, and that unity is just as important today as it was last September.

I urge my colleagues to vote for this amendment. It is a fair, balanced compromise offered in the same spirit of unity that moved us forward last year, and which can be the basis for moving us forward again today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I wonder if my friend from Virginia would clarify a few factual parts of his proposed amendment.

The Senator from Virginia said that he has been assured that the inflation savings which will result from the midterm review will be sufficient to cover \$814 million. I am wondering where that assurance came from, because whichever approach we adopt, that is an important part. Where was that assurance? Who gave the Senator that assurance?

Mr. WARNER. Mr. President, I thank the distinguished chairman. I went to the Department of Defense early one morning around 7:30 or quarter to 8 and spent the better part of an hour with the Secretary of Defense and his top budget people. I wanted to make certain that if I were to formulate this amendment along those lines—I concede to the chairman that it was my idea, and it caught them a little bit by surprise—the Secretary said he would like to consider it. That he did. He went back in his own internal system and eventually he conveyed to me the message that the amendment as I have given him in draft form would be acceptable to him and the administration.

I did concur that the calculations to be performed by the President's Office of Management and Budget would enable this amendment to authorize those funds.

Mr. LEVIN. The \$814 million that the Senator assumes in his amendment may or may not materialize, if the midterm review is not completed. But has the Senator from Virginia, as I understand it, been assured at this point prior to the midterm review that those savings will be forthcoming in inflation review?

Mr. WARNER. Mr. President, these are very good questions. I want to answer them very precisely.

The midyear review to which the Senator referred conducted by OMB is in progress. He is correct. While the review is not formally complete, we have been assured—that is, this Senator has been assured by the administration—that the revision of the inflation assumptions will—I repeat “will”—provide ample funds to cover the additional allocation for missile defense and DOD activities to combat terrorism as framed in the amendment.

Mr. LEVIN. One further clarification: That came directly from the Secretary of Defense.

Mr. WARNER. That is correct.

Mr. LEVIN. If it turns out otherwise when the midterm review is completed, despite that best estimate on the part of the Secretary of Defense, will the amendment still authorize the expenditure of that \$814 million in the ways specified? In other words, if it turns out to be inaccurate and there is only \$600 million in savings, am I not correct that the amendment would nonetheless authorize the \$814 million?

Mr. WARNER. Yes. On its face, it would do so. In the interim, I say to the chairman, the appropriations process will have a chance to review the midterm OMB analysis.

Mr. LEVIN. But the Senator's amendment, as I understand it, is not contingent on that amount of inflation savings being available. Is that correct?

Mr. WARNER. It is not contingent; that is correct.

Mr. LEVIN. And if the net savings turned out to be \$400 million instead of \$814 million, then would the Secretary be required to make cuts in other programs?

Mr. WARNER. Madam President, that is a question that I would reserve for the moment. But I am confident that option will not occur. If I may—

Mr. LEVIN. Because the Senator from Virginia is confident?

Mr. WARNER. That is correct.

Mr. LEVIN. The savings—

Mr. WARNER. Are going to be sufficient.

Mr. LEVIN. But my question is—if it turns out otherwise, there have to be cuts made somewhere, under the Senator's amendment, as he has just responded. He is not adding any money, so there must be cuts made somewhere. And those cuts, of course, could then come in areas that we have tried to protect, including operations and maintenance, readiness, and a number of other areas of which this committee has been very protective.

One of my concerns about the language of this amendment is that it is not contingent upon savings being available. It assumes those savings are available. And whether or not they are forthcoming, this money is authorized, as I understand it. So that is one of the concerns I have about this amendment.

Mr. WARNER. Madam President, I want to be extremely careful in my response. I will be meeting with the Secretary of Defense in about an hour's time. I want to clarify the chairman's question by asking it directly to him and providing the Senate, this afternoon, as this debate continues, a clear response to the chairman's question.

If I might add a bit here about this process, the administration uses certain inflation assumptions in building its budget, including its defense budget, to assure that the Government can buy the goods and services it needs. If inflation is lower than anticipated, the budget request is a little higher than needed to buy the required goods and services.

When a midyear review determines the inflation rate is lower than anticipated, the Secretary of Defense identifies budgeted funds that are no longer required as a result of the inflation—they refer to it as a bonus. Since they are deemed to be excess, there is no programmatic impact resulting from the inflation savings being used.

What happens if the new inflation assumptions are wrong and savings do not materialize? This borders on the Senator's question. Won't programs be affected then? Inflation assumptions are just that: assumptions made based on the best information available at the time. The information used during the midyear review is more recent and provides a better basis for inflation assessments than those made almost a year ago when the 2003 budget was being built.

The same question can be asked about any budget at this time. What happens to programs if inflation is higher than expected? I would note that the Department of Defense routinely takes advantage of inflation savings, as do the authorization and Appropriations Committees in both the markup and conference process. So this is not a new source of funds.

I would also note that the path taken by the House on missile defense is quite different than that of the Senate. The use of this source will be debated and resolved in the context of our conference, if adopted by the Senate.

Mr. LEVIN. I thank my friend and I yield the floor.

The PRESIDING OFFICER (Mrs. CLINTON). The Senator from Rhode Island.

Mr. REED. Madam President, as the chairman of the Subcommittee on Strategic Systems, I have had the opportunity, over the course of many hearings and many briefings, to look closely at our missile defense program, and also to recommend to the committee that we make these reductions.

All of these recommendations were based upon careful scrutiny of the programs. They were based upon an evaluation of the effectiveness of the programs going forward, and, in addition, a sense of trying to avoid duplicative costs, ill-defined programs, those areas in which money might be spent but there is no clear indication of the product that was going to be purchased. In fact, some purchases seem to be premature because the testing of the products had not been accomplished. So this process has been a long one, and it has resulted in specific recommendations that today we are considering on the floor of the Senate.

I will make some general points about what is in this bill because it represents a significant commitment to missile defense, both theater missile defense and national missile defense, which now have been amalgamated in the administration's approach which they describe as a layered defense: the boost phase, midcourse phase, and terminal phase.

We have made a significant commitment of dollars in this bill to missile defense, and those points should be made.

First, the Department of Defense estimates that in this year they will spend about \$4.2 billion. They expect to spend that for missile defense, leaving \$4 billion of funds to be carried over to the next fiscal year, 2003.

We recommend, in this bill before us today, \$6.8 billion of new funding for fiscal year 2003, giving the Department of Defense more than \$10 billion available for spending next year on missile defense. That is a significant commitment to missile defense, and one that is supported by this Senator and, I am sure, by others. It is probably twice what will be spent this year.

To characterize \$10 billion of available resources for missile defense next year as deep and damaging cuts to missile defense is somewhat inaccurate.

I should say at this juncture, the proposed amendment by my colleague from Virginia suggests that we add about \$800 million and give the President the option of spending it on missile defense or antiterrorism activities. But it seems clear to me this debate is about missile defense and not about terrorism. Terrorism is something we are concerned about, but I think the impetus for this amendment is the overarching concern of the administration for missile defense.

So I think, first, we have, in fact, included within this bill before us robust funding for missile defense. We also have to respond to the reality that today we are engaged in a war on terror.

In fact, the National Intelligence Estimate for December 2001 stated:

U.S. territory is more likely to be attacked with [weapons of mass destruction] . . . from nonmissile delivery means—most likely from terrorists—than by missiles, primarily because nonmissile delivery means are less costly, easier to acquire, and more reliable and accurate. They can also be used without attribution.

That is the National Intelligence Estimate for December 2001. So we do recognize there are threats to us from weapons of mass destruction, but we have to put it in context that the most immediate threats are either short-term theater missile threats by nation states or clandestine operations of terrorists entering the United States.

So with that recognition, I think this proposal we bring to the floor makes a great deal of sense. We have looked hard at individual programs. We are cognizant of the threats, particularly the theater missile threats. And we are also trying to do what we can to ensure that we protect this country from terrorist threats. So we have deliberated carefully and thoroughly on all of these issues.

Let me talk for a moment about the threats because they should be often mentioned because our strategy has to respond to these threats.

First, I think we should point out how we are going forward with the

PAC-3 system which is a theater missile defense system. It is in operational testing. It is strongly supported in this bill. It counters those threats that are often mentioned here on the floor.

I know colleagues have talked about the potential access to short-range missiles by terrorist groups in the Middle East. I think they have also talked about the developments which are ongoing in countries such as Iran and Iraq and North Korea for missile systems, short-range tactical systems.

We have a system that is in operational testing, the PAC-3 system that counters those threats. We support that system. It is supported in this budget. We hope it is fielded at the first possible moment, deployed with troops in the field. There are other systems, too, that we support.

We continue to develop the THAAD system, which is another theater missile system. That is supported in this budget. We are supporting the Navy theater-wide system. We are considering, and very carefully supporting, a whole range of missile systems that are important to our defense. So to suggest that this legislation is not supportive of missile defense is to miss the details of the legislation.

We are also looking very carefully, as I mentioned, at specific adjustments to the systems that are being considered today.

That is our role, our responsibility. We are not here simply to say whatever the Defense Department sends over is something we will support without any question or scrutiny. Our job is to look carefully at systems and to make critical decisions about scarce resources, and we have done that.

Let me suggest some of the recommendations we have made in the context of the missile systems I mentioned. First, the sea-based midcourse, which was formerly Navy theater-wide. We fully fund the development and test program, \$374 million. In fact, we add \$40 million for new shipboard radar for robust theater missile defense. We are adding money to these programs because we believe it is important, and we believe this type of additional expenditure should be included within the budget.

We do, however, look at the program carefully, and we have made the recommendation that \$52 million should be reduced because it is for a very vaguely defined concept development study. We believe that study is unjustified, undefined, but we are supporting vigorously the Navy midcourse program, sea-based midcourse, as we should.

From what I have seen of the Navy theater-wide system, the sea-based midcourse, the Missile Defense Agency is engaged in something which might be described as an ad hoc approach. Let me suggest why.

In our authorization bill last year, we asked the Secretary of Defense to submit a report to the congressional defense committees no later than April

30, 2002, on the Department's ultimate plans for the Navy theater-wide system. That was last year's language. We asked them: Give us your plan.

We received a letter back from General Kadish which essentially said: Here is some information, but we can't give you any of the definitive information, particularly the life cycle costs of the system. What he said was, basically, while the questions posed in this request are relevant, a response will not be available until the SMD element of the BMDS is defined, and he suggested that the SMD definition will be completed by December 2003.

That is interesting. Then just a few weeks ago—approximately 10 days ago—I read in the Wall Street Journal where General Kadish was saying there will likely be a contingent deployment of this system in the year 2004. So the program will be defined by December 2003, and then we will have contingency deployment in 2004. That suggests to me a lack of a clear-cut plan, a lack of meaningful communication to this committee and to this Senate.

That shaped a lot of our deliberations in the sense of these ill-defined programs and the significant requests for money.

One area which is most relevant in this regard is the request for systems engineering money. Systems engineering money is generally the hiring of engineers, contractors, and software engineers to talk about designing and integrating systems. It is a very important part of the development of any system, particularly one as complicated and technologically challenging as national missile defense. We had included within this budget \$500 million in systems engineering and other Government support and operations funding in individual missile program accounts: More than \$170 million in systems engineering for the midcourse program element; the sea-based and the ground-based, the Navy system and the system in Alaska; more than \$100 million for program management operations funding in individual program lines in the midcourse element; more than \$70 million of Government support in the boost program element; more than \$20 million in the sensor program element; and more than \$80 million in the THAAD program element.

These are all systems engineering or program management costs. It adds up to a half a billion dollars. There is another category of systems engineering which has been developed in the last 2 years called the BMD system, the system of systems.

First, let me suggest that there are some practical time problems in spending all this money. The presumption for BMD systems engineering is that you are going to integrate all these systems that are being deployed. The reality is, it is very unclear at this juncture what systems will be deployed, what radars will be used, what types of sensors, what combinations of missiles and sensors. It is very unclear.

But still the request was for a significant amount of money for systems engineering for the entire BMD system.

We looked carefully at this. We concluded that \$736 million for this category was more than sufficient, together with the \$500 million that is already embedded in each of the program elements of the existing BMD program.

As a result, we were able to reduce this request for BMD system money by \$330 million. But let me also point out that as of this juncture, it appears that BMD will only spend \$400 million of last year's money, and this will leave about \$400 million for the next fiscal year. Together with the \$736 million and the \$400 million carryover, BMD systems engineering has over \$1 billion, hardly a draconian, drastic cut in their ability to continue to do these programs of integration and systems engineering.

Again, we looked carefully. We determined what they were doing. We determined that they would have more than enough resources to continue their efforts into the next fiscal year, and we were able to move some of this money into the shipbuilding accounts which everyone in this Chamber, I would say without hesitation, will support enthusiastically, an immediate need for our Navy for additional ships.

In addition, we were able to move some of this money into programs for the protection of Department of Energy nuclear facilities. We did that in response to published reports, which we have all seen, that the Office of Management and Budget turned down the Department of Energy for a significant increase in security funds at a time when the threat—at least if you believe the last few weeks from the media—is not the long-range missile, the threat is the terrorists coming in here on an airplane, landing in Chicago with a plan or at least an idea to seize radiological material someplace in the United States, construct a "dirty" bomb here, and detonate it. Yet the administration said: No, DOE, you don't need this extra money to secure the nuclear facilities.

We think DOE needs this money, and it is a higher priority than excessive systems engineering money for the ballistic missile defense program.

So as we have looked at all of these programs, we have tried to take a very careful, considerate look, tried to make tough decisions, and they are tough decisions because we don't have unlimited, infinite resources. As the Senator from Michigan said, I question sincerely the availability next year of the inflation savings assumed in the proposed Warner amendment. This seems to be one of those fudge factors that is put in, an estimate. You might realize it, you might not realize it. I await, as the Senator from Michigan does, eagerly, Senator WARNER's response from the Secretary of Defense with respect to these questions.

The reality is that these resources may not be realized through inflation

savings. If we authorize the spending, which, for political reasons, the administration seems to be absolutely committed to, we may end up using operational maintenance money to fund missile defense, to fund these ill-defined areas of systems engineering and other programs.

We will find ourselves, in that case, coming back here and wondering why our flying hours are down for the Air Force and Navy pilots, why we can't provide the sort of resources we need for ongoing operations maintenance at a time when we have forces in the field engaged today, trying to destroy these terror networks, and succeeding in many cases because of their skill and courage and the support they are receiving.

We have brought to the floor a bill that robustly supports missile defense but asks very tough questions about specific programs that are not adequately justified or are redundant. Let me give an example of that. The THAAD missile system is well on the way toward the engineering phase to get to a point where it can be part of our theater missile defense system in the next several years, we hope. They are asking for \$40 million to purchase 10 unproven missiles.

Our concept is fairly straightforward and simple. We provide that \$895 million for the test development and for the first flight test of the missile in this budget. A simple proposition: Let's fly one of these missiles first before we buy 10 missiles. Maybe we can save resources. The THAAD Missile Program is a good example of a program that was once forced to accelerate beyond its technical means. It was, as General Welch described it, rushing to failure, and it failed—program course out of sight, product not adequate, not meeting the requirement set out for the system. It was a program in such distress that it was virtually on the chopping block. General Welch's report said: Listen, you have to go back to a careful, deliberate, thorough development process. The program is back on track. And now our sense is they are trying to get off track again—let's just buy these 10 extra missiles today.

That is an example, I believe, of the robust support—\$895 million. But the very careful and appropriate question is: Why do you need to buy 10 missiles today when your first flight test is going to be in fiscal year 2005? Due to time constraints, I must yield the floor but will take time later to continue this discussion.

AMENDMENT NO. 3918

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the amendment by the Senator from Massachusetts, and the time until 12:30 will be equally divided. Who yields time?

Mr. LEVIN. Madam President, with apologies to our friend from Rhode Island, that was the unanimous consent request. I can assure him that there is no time limit on the missile defense

amendment that Senator WARNER will be offering. So we can return to him at that time. The time was to be divided. Senator KENNEDY has returned.

Let me ask the Chair a question. Is the time divided, under the unanimous consent agreement, until 2:30?

The PRESIDING OFFICER. Yes, the time is divided equally.

Mr. LEVIN. Is there anybody in control of the time here?

The PRESIDING OFFICER. Senator KENNEDY controls 14 minutes and Senator LEVIN controls 14 minutes.

Mr. LEVIN. I yield my time to Senator WARNER so that there is equal division between the proponents and opponents.

Mr. WARNER. It seems to me it was Senator KENNEDY and myself. I have delegated that to my colleague from Wyoming.

Mr. LEVIN. I ask unanimous consent that it be divided in that way.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Massachusetts is recognized.

Mr. KENNEDY. I yield myself 7 minutes.

Madam President, the record is clear. When there is real competition, public workers will show their strength. According to the DOD's numbers, when Government agencies have competed for contracts, they have won the bid 60 percent of the time fair and square. When public workers win these competitions, the taxpayers save money and good workers keep their jobs.

This amendment is about competition—competition for the Defense Department.

Our amendment will ensure that a framework is established for competition for various goods and services in the Defense Department. We provide a framework, where if there are national security items, they can be exempt. If there are requirements for emergency, they can be exempt. If there are certain needs in terms of the high-tech areas, they are exempt. But for the broad range of different contracts, this amendment will ensure that the American taxpayers' interests are going to be preserved. But, more importantly, we are going to get the best in terms of performance for the DOD.

The public-private competitions that have taken place have saved, on average, over 30 percent, according to the Defense Department.

The Republicans claim that this amendment is in conflict with the GAO Panel on Commercial Activities. In fact, this amendment is based on the principle unanimously articulated by that panel, which calls for greater public-private competition, which gives DOD the power to design the framework for that competition consistent with the sourcing principles laid out by the GAO panel.

The Republicans claim this amendment takes away flexibility from the Department of Defense. Nothing could be further from the truth. When na-

tional security so demands, DOD is given the power to waive public-private competition. The amendment exempts many categories of work, including almost all high-tech work, from public-private competition. The amendment even provides a waiver to DOD for functions that must be performed urgently.

It remains in the discretion of DOD to determine how many jobs should be subject to the public-private competition and which jobs are subject to this competition. The DOD retains enormous flexibility under this amendment.

The Republicans claim this amendment will cost money. That is a sign of their shortsightedness when it comes to the value of competition. The DOD recognizes that public-private competition consistently yields savings of over 30 percent on contracts. Any short-term transition costs, which the CBO has estimated at one-tenth of what they are claiming for the substance of this amendment, will be more than made up for in long-term savings to the taxpayers.

The Republicans claim that we are moving too quickly with this amendment and that the Senate should not act now to promote expanded competition. I only ask that my Republican opponents listen to the advice of Mitch Daniels, the Director of the Office of Management and Budget, when it comes to these matters. Earlier this month, he said:

We cannot afford to wait. . . . The objective is to get the taxpayers the best deal.

While we wait, the administration is moving ahead with shifting 15 percent of all eligible jobs to the private sector without any adequate competition.

The passage of this amendment will lead to a smarter and more efficient procurement policy for the Department of Defense. Just as no private company would reasonably outsource jobs without a hard-headed analysis showing cost savings, Government procurement should be based on what is best for taxpayers and our national defense. The consequences will be savings for taxpayers and improved dependability for our courageous men and women in uniform.

We are surely facing great challenges in terms of our Nation's security in this new era. More than ever, we are relying on the Department of Defense and its dedicated employees. As we expand our Nation's military budget, we must ensure that taxpayers and our men and women in uniform are reaping all of the benefits possible. True competition is more critical today than ever before.

Only if we give public workers the opportunity to compete in public-private competition will we have true competition.

This is what the GAO has said on the question of the Commercial Activities Panel, which has been quoted yesterday:

Competitions, including public-private competition, have shown to produce signifi-

cant cost savings for the Government, regardless of whether a public or a private entity is selected.

Angela Styles, senior officer at OMB, a procurement official, testified on the House Armed Services Military Readiness Subcommittee on March 13 2002:

No one in this administration cares who wins a public-private competition. But we very much care that Government service is provided by those best able to do so. Every study on public-private competition that I have seen concludes that these competitions generate significant cost savings.

What is it about our friends on the other side that they refuse to permit the competition to take place?

Now, we heard estimates just yesterday that, according to DOD, the amendment will cost \$200 million. The years of experience and the statements of the administration's officials clearly demonstrate that public-private competitions save money rather than cost. The Deputy Under Secretary of Defense for Acquisition Technology and Logistics testified that the public-private competitions save the Government \$11.2 billion, a savings of \$11.2 billion. The administrator of OMB's Office of Federal Procurement Policy said the use of the public-private competition consistently reduces the cost of public performance by more than that. Even in the short term, the core of this amendment would cost about a tenth of what the critics and DOD claim.

Those opposed to it say the amendment would prevent the implementation of the GAO panel recommendation. The amendment is based on the unanimous principles of the GAO panel that call for public-private competition. The GAO recommended:

A process that, for activities that may be performed by either the public or private, would permit public-private sources to participate in competitions for work currently performed in house, work currently contracted in the private sector, and new work consistent with these guiding principles.

That was a quote.

The amendment also provides for a pilot program to test the effectiveness of the best value approach that is endorsed by the opponents of this amendment. Furthermore, arguments are made by the opponents that the amendment goes against the principle held for 50 years: The Government should not compete for noninherently Government functions. For the first time, the amendment would mandate that the Government compete with the private sector.

The proponents of that statement left out a key clause in the long-standing U.S. procurement policy. According to OMB, "the Government shall not start or carry on any activity and provide a commercial product or service if the product or service can be procured more economically from a commercial source."

We are not asking that work be given to the private sector if indeed the Federal Government agency can do it more efficiently. The Government personnel system is not nimble enough to accommodate this amendment and move on

short notice. That is an argument that is made against this amendment.

There is no reason to believe the Government cannot adequately accommodate the need for qualified personnel. In the face of pending base closures, OMB outsourcing quotas, the DOD civilian workforce will continue to downsize. As a result of this process, over 300,000 DOD civilian personnel have lost their jobs due to outsourcing in recent years. There is an excess of potential qualified personnel.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KENNEDY. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. THOMAS. I yield 5 minutes to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Madam President, I rise today in opposition to the Kennedy amendment, which would arbitrarily require Federal Government agencies, particularly the Department of Defense, to compete with the private sector for the performance of inherently nongovernmental services within the Department of Defense. As chairman of the Republican Senate High Tech task force, I believe that contracting with the private business entities helps drive innovation and indeed save the taxpayers money.

This amendment would reverse the progress that has already been made in this area and obviously create damage to important initiatives such as e-government. In fact, many of the information technology companies across this country believe they would no longer seek Federal contracts with DOD under the provisions of this amendment, thereby, unfortunately, creating job losses in the private sector.

This view has been shared by my colleagues, Senators ENSIGN, WARNER, GRAMM, SMITH, COLLINS, HUTCHISON, BURNS, BENNETT, HATCH, and BROWNBACK.

This amendment would mandate that every new Department of Defense contract, modification, task order, or contract renewal undergo a so-called public-private competition, whether or not the Government even has the requisite skill, competence, or personnel to perform the work.

The changes in this current process by this amendment will: (1) weaken and delay Government performance; (2) could devastate small business; and (3) have a harmful effect on our important, creative, high-technology industry.

First, the anti-private-enterprise exercise that would be caused by this bill would result in delays in performance of Government contracts. The Department of Defense would lack the capacity to quickly procure and adopt innovative solutions to enhance safety, security, and effectiveness. It would be an undesirable bureaucratic impediment that could harm the ability of

the Defense Department to perform its duties, especially now during a national crisis.

Secondly, the added costs associated with the A-76 program, in comparison to competitive procurement practices, traditionally would exclude most small businesses from participating in service contracting. This would have a particularly detrimental impact on women, minority, and veteran-owned companies.

Finally, the amendment will have a devastating impact on the high-tech industry, an industry that is so important to the competitive vitality of the American economy. This amendment is opposed by the high-tech industry, including the Information Technology Association of America (ITAA). The exemptions for technology are ambiguous and do not cover the full range of activities conducted by the exempted industry. Moreover, ITAA notes the information technology exemption herein covers only 3 percent of total IT service contracting. This is also opposed by the Chamber of Commerce and various unions.

I will close with the views of the Secretary of Defense, who says:

We have made a top priority of finding efficiencies and savings within the Department of Defense to enable us to improve our tool-to-tail ratio. An important element of that effort is to adapt business and financial practices to make the best warfighting use of the resources the American taxpayers provide us. The draft Kennedy amendment would increase Department cost by requiring public-private competitions for new functions and for previously contracted work already subjected to market competition. It would also adversely impact mission effectiveness by delaying contract awards for needed services.

The Secretary of Defense, Mr. Rumsfeld, closes:

The proposed amendment would increase Department costs and dull our warfighting edge.

I suggest that no Member of this body should support legislation that dulls our warfighting edge. I therefore urge my colleagues to vote against this amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Madam President, I yield myself 30 seconds to respond.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I am still waiting to hear the reason from the other side that competition does not work. We are told that we cannot have competition in the Defense Department because it is going to take time to set up a process and procedure; we cannot have it because it is going to work against small business.

We have a million-dollar exemption so that anybody below a million dollars, a small business, can compete. Perhaps someone on the other side can tell us why competition cannot work. We have not heard the answer to that. What we have heard is all of the accountants, Mitch Daniels, the GAO,

say that competition can work, and when it does work, we get the best in terms of our fighting men and women and we get the best in terms of taxpayers.

I cannot understand the opponents saying we cannot set up a process and procedure in order to deal with this; it is going to be too complicated and costly. That is baloney. Competition can work, and I am so surprised, from the party that allegedly is for more competition, that they cannot support this amendment.

I yield 3 minutes to the Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I rise in strong support of the amendment offered by the Senator from Massachusetts, Mr. KENNEDY, of which I am an original cosponsor.

I have long been concerned about the costs and benefits associated with the process by which the Federal Government contracts out work. In particular, I am concerned about the lack of data on whether these contracts actually achieve real savings for the taxpayers, and about the effects of outsourcing on the pay and benefits of Federal workers.

I do not automatically oppose contracting out. Such a process is often appropriate. I am concerned, however, that the Department of Defense is currently able to circumvent the public-private competition process for contracting out work that is employed by other Federal agencies. Contracting out affects the jobs of thousands of dedicated Government employees each year. These men and women deserve the chance to compete for this work, as the Senator from Massachusetts was pointing out. They deserve the right to compete for their jobs, and they have a right to do it on a level playing field. The Kennedy amendment would help to provide a level playing field by ensuring that true public-private competition actually occurs.

This amendment does not prohibit the Department of Defense from contracting out. It does not stipulate which categories of jobs may or may not be subject to public-private competitions. In fact, a number of job categories are exempted. This amendment is broadly worded to give DOD flexibility on which and how many positions to subject to competitions. The amendment also includes a national security waiver.

Some have argued that this amendment would spell the end of contracting out by the Department of Defense. Again, that is not true. This amendment simply requires DOD to comply with four broad goals aimed at bringing a measure of fairness and equity to the contracting out process.

First, the amendment would ensure that public-private competition actually occurs before work currently performed by Federal employees is contracted out. The DOD would be able to

use any cost-based process to carry out this competition, including the Circular A-76 process. This process would give DOD employees the opportunity to present their best bid and to compete on a level playing field with bids from contractors. The goal of contracting out is to get the highest quality work at the best price for the taxpayers. We should not continue to shut the civilian DOD workforce out of this process.

Second, this amendment would help to ensure that Federal civilian employees are given the opportunity to compete for a fraction of what is called "new work" to be performed at DOD. This provision would be phased in over several years.

Third, this amendment would require DOD to use "contracting in" as well as "contracting out" to make sure that Federal taxpayers are getting the best deal. It only makes sense to periodically compete work that has been awarded to contractors to ensure that the Federal taxpayers are continuing to get their money's worth. Work being performed by contractors should be subject to the same scrutiny as work being performed by Government employees. In the interest of fairness, the amendment requires that DOD opens to competition similar numbers of contractor and civilian employee jobs.

Finally, the amendment would require DOD to establish an inventory to track the cost and size of its contractor workforce. This inventory would be compiled using the same procedures that the Department of the Army recently adopted to track its own contractor workforce. I share the concerns of some of my constituents, who have told me that they believe that contracting out simply shifts jobs from the Federal Government to the private sector without any real savings. I also share their concern that part of any savings that is achieved may actually come from reduced salaries and benefits that are paid to contractor employees. It is important that DOD and Congress have an accurate picture of the true size and cost of the contractor workforce.

In sum, this amendment does not prohibit the Department of Defense from contracting out. It would ensure basic public-private competition that will allow DOD employees to compete with contractor bids on a more level playing field. It will also help to ensure that the DOD contracting process is achieving the best result for taxpayers.

I urge my colleagues to support this amendment.

THE PRESIDING OFFICER. Who yields time?

Mr. THOMAS. I yield 5 minutes for the Senator from Missouri.

Mr. BOND. Madam President, I appreciate the time.

I am very much concerned that the Kennedy amendment takes us backward. Under the Federal Activities Inventory Reform Act of 1998, the FAIR Act, agencies are examining activities to find what they do that duplicates

activities done in the private sector. This would be done to see if these activities can be contracted out, to do those activities more cheaply and effectively. This would prevent the Federal Government from competing with the private marketplace. When the job is done in the private marketplace, not only do we avoid having to carry an additional Federal bureaucracy, we get to tax them if they make a profit and we get the benefits of the competition, the innovation, that small business brings.

As the ranking member of the Senate Small Business Committee, I focused a lot of time and attention on what small businesses are able to do. We find there are some tremendous innovations and new ideas coming from small business. Whenever some action can be done effectively in the private sector, I believe the private sector should have the opportunity to do it. Functions that are inherently governmental, clearly no one disagrees, should be done by Federal employees. We are not talking about those. We are talking about functions that are commercial in nature.

The current process for evaluating these functions for a possible contracting out is the so-called A-76 process. OMB Circular A-76 calls for competition to take place wherever commercial activity currently performed by a Government agency is proposed to be contracted out. The Federal employees of that agency describe how they would organize themselves into the most efficient organization and compete against the proposals submitted by private contractors.

The Kennedy amendment would bar contracting out of these functions, unless the private contractor's proposal to provide cost savings of at least 10 percent over the Federal employee's MEO. This is intended to make contracting out as difficult as possible. This is a direct shot at small businesses. This is meant to cripple the ability of small businesses which are now providing vital products and services in our Defense Department.

The Kennedy amendment purports to implement the recommendation of the Commercial Activities Panel convened by Comptroller General David Walker. However, the sole emphasis on cost savings—also, the Kennedy amendment puts in a 10-percent additional savings—the sole emphasis of the sponsor of this measure is saying that the deciding criteria in that should be cost actually conflicts with the Walker panel recommendations. The Walker panels calls for the standard of best value, what generates the overall best value to the taxpayer.

Cost savings is clearly one factor being considered. But best value contracting also includes other factors, such as higher quality, faster delivery, innovative processes, reliable past performance, or other criteria that might justify a higher cost.

Best value contracting is what most of us do every day when we go out to

buy goods and services. When you buy lunch, you do not always buy the lowest price item on the menu every day. When you go to the department store, you do not always purchase the cheapest item on the shelf. You may deliberately buy an item that is more expensive because you expect the quality to be better. The best value approach puts Government contracting on par with how average, intelligent, informed consumers make their purchases in the marketplace.

That is one reason the Government is increasingly relying on best value contracting and why the Walker panel recommends it for analyzing contracting out proposals. The Kennedy amendment's exclusive emphasis on costs savings, and the additional unworkable requirement the savings must be more than 10 percent, is a step backward from the Walker recommendations.

The sponsor of the amendment has cited OMB and other statements made by this administration, when, in fact, the President, speaking for this administration on March 19, emphasized the vitally important role that small business plays in meeting the needs of the Federal Government. He talked about taking a major effort, launching a major effort, to stop the bundling of contracts to prevent their being awarded to small businesses.

There is currently underway a study in OMB under Angela Styles on how to get more contracts unbundled so small business can provide a workable and economic role.

I urge my colleagues to oppose the Kennedy amendment.

Mr. THOMAS. I yield our final 5 minutes to the Senator from Tennessee.

Mr. THOMPSON. Madam President, there has been a lot of discussion concerning the Commercial Activities Panel. As has already been stated, this is a panel that was set up with the distinguished citizens to consider this complex problem. One of their recommendations, No. 9, is to ensure that competitions involve a process that considers both quality and cost factors.

My understanding is that the amendment of the Senator from Massachusetts addresses only the cost factors in determining the best value to the Government. On that, in and of itself, we clearly have a deviation, to say the least, from the Commercial Activities Panel.

That is not as significant a point as the one following, and that is the Armed Services Committee simply has not reviewed the panel's recommendations, and we on the Governmental Affairs Committee have not had the opportunity to review and consider the panel's recommendations. This is certainly an area of some complexity and controversy that should go through the committee process.

We have a bill before the Senate now on the Governmental Affairs Committee similar to the Kennedy amendment but it applies to all agencies in the Federal Government. We have had

one hearing on that bill to date. We are in the middle of that process. This amendment will clearly increase the costs to the Government and distract the Department of Defense from its war fighting mission.

The Senator asked, why are we against competition? The answer is, we are not. We have plenty of competition. What we have is competition in the private sector competing for the jobs. The Senator would interject the Federal unions into the middle of that competition where there has been no such injection in times past. The Department of Defense points out it will cost more money and it will delay contracts at a time when we neither need higher costs nor delays in the issuing of contracts.

The DOD and the OMB Director opposes this amendment, as well as small and minority-owned businesses and major labor unions. This is no time to be shifting massive jobs from the private sector to the public sector labor unions. Private labor unions have been losing membership over the past several years while membership in the public labor unions have been rising. Many labor unions oppose this amendment as well as taxpayer groups.

I urge my colleagues to vote against the Kennedy amendment.

I yield the floor.

Mr. KENNEDY. How much time remains?

The PRESIDING OFFICER. Three minutes.

Mr. KENNEDY. I yield a minute and a half.

Mr. DURBIN. I am happy to be a cosponsor of this amendment.

I rise today to speak in support of the Kennedy amendment, which will help ensure real competition between the public and the private sectors for the work performed by the Department of Defense. I am pleased to join my colleagues, Senator JACK REED, DANIEL AKAKA, and RUSS FEINGOLD as a cosponsor of this important amendment.

Let me review what this amendment does. This amendment addresses the need for more competition and more information by requiring an analysis of the costs of maintaining work in the public sector. The amendment defines broad and flexible principles to guide a public-private competition process. It allows the Defense Department wide flexibility in setting up a competition consistent with these broad principles. The amendment provides discretion to the Defense Department to waive the public-private competition requirements when national security demands and exempts a number of activities from the requirements. It also permits DOD the discretion to determine which jobs and how many jobs should be subject to public-private competition.

The amendment will also provide Congress the information it needs to exercise important oversight by watching the level of managed competitions, since there is currently no requirement that agencies conduct them. And by granting DOD "pilot program" author-

ity to explore alternatives to the OMB Circular A-76 process that will yield the same projected cost savings, we can gain some practical experience with some of the reforms recommended in the recently published report of the Commercial Activities Panel.

Nine months ago, our Nation's collective consciousness was jolted when heinous acts of terrorism were committed on American soil. As a result of those horrific acts, we are not—and never will be—the same. We are stronger in our response, more steeled in our resolve, more vigilant about identifying and eliminating our vulnerabilities. Overnight, that life-altering experience forced us to seriously evaluate the workings of our Government from a new and different perspective. We now view "homeland security" in completely different ways. Protecting our borders, our ports, nuclear power plants, chemical plants, water supplies, and other critical infrastructure has taken on a new and urgent imperative. The Department of Defense is reorganizing itself for homeland security, and functions that may not have seemed essential to DOD's mission may now, in fact, be essential; and conversely, there may be functions that could be better performed in the private sector, allowing DOD to focus on its mission.

I would like to share an example to illustrate this point. After September 11, I asked that my staff to secure a briefing on the security of a chemical munitions storage depot that sits 30 miles from the Illinois border. The United States is in the process of destroying these deadly munitions, which could kill hundreds of thousands of people, pursuant to the Chemical Weapons Convention. I learned that the depot had only one uniformed military officer—the commander—to protect it, because security was provided by private contractors. About a week after that, National Guard troops joined the private contractors in protecting this site.

Historically, DOD has set the pace as the lead Federal agency in using competitive sourcing. But when we talk about "setting the pace"—what we know is that fewer than 1 percent of DOD service contracts are subject to public-private competition. Work is outsourced without any opportunity for public sector employees to compete for the jobs. And DOD is considered the leader—few civilian agencies have utilized the process; in fact, in Fiscal Year 1997, not one civilian agency reported conducted a cost comparison study.

The Department of Defense spends tens of billions of dollars annually on service contracts—ranging from services for repairing and maintaining equipment to services for medical care to advisory assistance services such as providing management support, performing studies, and delivering technical assistance.

In fiscal year 1999, DOD reportedly spent \$96.5 billion for contract services—more than it spent on supplies

and equipment. GAO has repeatedly reported that inadequate and inaccurate information provided by DOD on service contract spending hampers congressional decisionmaking and limits congressional use of information reported in the budget.

Not only is reliable cost information scarce, there is too little competition for contracts to provide services to and for Federal agencies. As I indicated, fewer than 1 percent of DOD service contracts are subject to public-private competition. Because there is such a small fraction competed, there is a paucity of information and a host of unknowns about whether outsourcing to the private sector is really saving money for the taxpayers. Outsourcing has evolved as one of the principal mechanisms used to reduce the size, scope, and costs of the Federal government. However, we have few clues about whether outsourcing has in fact reduced government costs, size, and scope.

A GAO study of savings obtained from competitive sourcing published in August 2000 reflected that DOD did realize savings from seven of the nine competitive sourcing cases reviewed, although less than the \$290 million DOD initially projected. And savings occurred regardless of whether governmental organizations or private contractors won the competition. Last year, the General Accounting Office elevated strategic human capital management to its list of "high-risk" government-wide challenges. In testimony in February 2001 before the Governmental Affairs oversight subcommittee which I now chair, Comptroller General David Walker made it abundantly clear that Federal employees are not the problem. As Mr. Walker emphasized, to view Federal employees as costs to be cut rather than assets to be valued would be to take a narrow and short-sighted view, one that is obsolete and must be changed. I was heartened by his perspective.

Yet right on the heels of this acknowledgement of the severe human capital crisis facing the Federal workforce, the administration launched a major initiative requiring Federal agencies to compete or directly convert to the private sector at least 5 percent of the full-time equivalent jobs listed on their Federal Activities Inventories. An additional 10 percent of the jobs are to be competed or converted by the end of Fiscal Year 2003, 85,000 jobs, for an aggregate of 15 percent of all Federal jobs considered commercial in nature.

It strikes me that it will be about as formidable as the perils of Sisyphus to make any headway in recruiting and retaining the best and brightest in the Federal workforce when in the same breath you are telling them that over the next few years one out of every four jobs is potentially slated to disappear into the private sector. We really don't have a trove of solid, reliable agency-by-agency information about

the costs and performance of work that is being performed for the government under contract. This amendment will begin to gather it—by and for the Department of Defense.

I have long been interested in whether we have a system to measure and account for these costs, determine if there is savings, and oversee the work that is being done with Federal funds. It has been my impression that some of my colleagues have been just hide-bound to outsource, without regard to the price tag or performance. Their motivation was to reduce the size of the Federal workforce—at any cost. When I suggested amendments—arguing that we had to save money, they rejected them. They told me that is not the point—we have to turn some lights out in some federal buildings. I would like to know whether that's still driving the outsourcing fervor.

I want to be perfectly clear: I am not opposed to all outsourcing. What I am concerned about is ensuring that decisions to shift work to the private sector are made fairly, not arbitrarily; that public-private competition is fostered; and that we have a reliable system in place to have information about the costs and performance of work being performed with Federal funds by the private sector under these contracts, in essence, accountability.

You can outsource and save money for taxpayers, and I think you should do that. If you decide you will outsource, privatize, and contract out, whether you save money for taxpayers or not, you are not serving either taxpayers or the needs of our Nation.

It is interesting to me that the Senators on the other side of the aisle are fearful of the word "competition." The thought that the private sector might have to compete for providing services to the Federal Government with the public sector is unacceptable to them.

When you look at the Department of Defense, they spend over \$96 billion a year on contracts per services. How many of those are competitively bid? Less than \$1 billion. Ninety-five billion out of \$96 billion in these contracts for services go without competitive bid. It has created cozy, sweetheart, comfortable arrangements with companies and the Pentagon. They do not want to compete. They do not want to stand up against those who say we can do it for you more professionally, more cheaply, more effectively. They can't stand the idea of competition. That is why they are opposing the Kennedy amendment.

Should we not at this point in time of our history, with limited resources, fighting a war on terrorism, insist the taxpayers get every dollar of service for every dollar of taxpayers' money they put into our national defense? That is what the Kennedy amendment says. That is why I am happy to co-sponsor it.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. KENNEDY. How much time remains to the other side?

The PRESIDING OFFICER. They have 1 minute 25 seconds.

Mr. KENNEDY. On either side, then? The PRESIDING OFFICER. There remain 1 minute 25 seconds for both.

Mr. THOMAS. I just want to respond to the comments made with respect to OMB. I want to read from a letter from the Director.

DEAR SENATOR WARNER, I am writing to express deep concern over the possible Kennedy amendment [proposal]. While packaged in good-government clothing, this amendment will severely limit the Department of Defense's ability to acquire services necessary to help the Department meet current threats. The Department of Defense must have the flexibility. . . .

While agencies are embracing competition, focusing on core mission, and eliminating barriers to entering the marketplace, this amendment does the opposite.

The Senator was talking about support from this Department, and this is not what is there.

It would require the Government to consider reforming non-core activities that it doesn't have the skills to do when entrepreneurs and their employees are ready, willing and able to perform.

We most focus our agencies on performance and accountability. Now—when our nation is at war against terrorism of global reach—is not time for the Secretary of Defense to have fewer options, for the sake of moving more functions into government hands.

I yield the floor.

Mr. KENNEDY. Madam President, I yield myself the remaining time.

We should not have to get into a discussion about the value of competition. But a year ago one of our colleagues offered a very similar amendment and then Senator WARNER said: Let's wait until we have the Commercial Activities Panel report. That was to guide the Defense Department.

In this report, on page 47, it says:

Establishing a process that, for activities that may be performed by either the public or the private, would permit public and private sources to participate in competitions for work currently performed in-house, work currently contracted to the private sector, and new work, consistent with these guiding principles.

Unanimous recommendation. That is what this amendment does. That is why we believe it is important. It will be in the interests of our national security, the Department of Defense, and the taxpayers. That is why we believe this amendment should be accepted.

I believe all time has expired.

RECESS

The PRESIDING OFFICER. The hour of 12:30 p.m. having arrived, under the previous order, the Senate will stand in recess until the hour of 2:16 p.m.

Thereupon, the Senate, at 12:36 p.m., recessed until 2:16 p.m. and reassembled when called to order by the Presiding Officer (Mr. REED).

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003—Continued

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, parliamentary inquiry: It is the understanding of the Senator from Virginia that the time between 2:15 and 2:30 is to be equally divided between the distinguished Senator from Massachusetts, the distinguished Senator from Wyoming, and myself.

The PRESIDING OFFICER. The Senator is correct.

Who yields time?

Mr. KENNEDY. Mr. President, I yield myself 3 minutes.

Mr. President, under our amendment, the public workers and private contractors alike will have a chance to compete for Department of Defense contracts. It will represent approximately \$100 billion. Only about \$1 billion of that is competed for. We believe competition is good. We believe competition will get the best product at the best price, which will reflect the unanimous recommendations of the recent study. Fewer than 1 percent of these Department of Defense service contracts are done in that way at this particular time.

I don't understand for the life of me why there should be resistance or reluctance to these various proposals. This kind of proposal was considered by the Commercial Activities Panel on improving the sourcing division of the Government, which was chaired by the Comptroller of the United States.

In this particular proposal, one of the recommendations, which was 12 to 0, was the amendment we are offering today. If our Republican friends have trouble with that, why wasn't there some opposition to that in this report? There was none. It is a unanimously favorable report. This wasn't Democrat and this wasn't Republican. These were contractors, representatives of the public, employees, and accountants, talking about how the U.S. Department of Defense could get the best buy for its money. It was said for years that we couldn't go ahead with competition until we finally got the Commercial Activities Panel report. That took a year and half and 11 different hearings with public comments from all over.

This was unanimous. It was not 8 to 4; this proposal was unanimous. They believe as a result of their proposal that DOD is going to get the best services—the American taxpayers are going to get the best buy, the best service, and the men and women of the military are going to be best served.

Why in the world the resistance to that argument?

I withhold the remainder of my time. The PRESIDING OFFICER (Mr. CORZINE). The Senator from Wyoming.

Mr. THOMAS. Mr. President, I yield myself 5 minutes of our time. We have 7½ minutes. I yield myself 5 minutes out of our 7½ minutes.

I want to respond to the Senator. He asks, who opposes this? Let me give you some idea of who and why.

One, the amendment will increase costs to DOD by \$200 million a year. Secondly, he talks about the report of